

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF WISCONSIN

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Lewis Edward Byrd, III,

Civil Action No: 17-CV-191-JDP

Plaintiff,

v.

**DEFENDANT'S REPLY TO  
RESPONSE TO PROPOSED  
FINDINGS OF FACT IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

Brandon Arenz,

Defendant.

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The above-entitled action came on for a hearing before the Honorable James D. Peterson, District Judge, on Defendant Brandon Arenz's motion for summary judgment. Appearances are as noted in the minutes of the hearing.

Based on the arguments at the hearing, the briefs, affidavits and exhibits, and all of the files and records herein, the Court now makes the following:

**PROPOSED FINDINGS OF FACT**

1. On August 13, 2016, Mr. Byrd was driving in Wisconsin after absconding from his intensive supervised release from Minnesota related to a 2011 conviction for First Degree Criminal Sexual Conduct. (See Aff. Prochnow, Ex. 4, at 7 (sentencing hr'g tr.), Ex. 5 (Minn. Dist. Ct. 27-CR-08-4117 (register of actions), Ex. 6 (Minn. Dep't Corrections Offender Locator).)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

2. When Juneau County, Wisconsin law enforcement came into contact with Mr. Byrd, he commenced a high-speed chase. (Aff. Prochnow, Ex. 1, at 3 (criminal compl.).)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

3. At 7:03 p.m., Vernon County Deputy Sherriff William Zirk was dispatched to assist while Mr. Byrd was proceeding from Elroy, Wisconsin to Union Center, Wisconsin on Highway 80. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

4. At that time, Officer Todd Kruger of the Elroy Police Department, was pursuing Mr. Byrd in a squad car with its emergency lights activated. (*Id.* at 3, 4.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

5. Mr. Byrd pulled over to the southbound lane at approximately 2.5 miles per hour. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

6. Deputy Zirk pulled forward towards the southbound shoulder, attempting to force Mr. Byrd further off the shoulder, but Mr. Byrd swerved as if to ram the deputy's vehicle and then sped away towards Union Center. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

7. Mr. Byrd then led the high-speed chase through the Village of Union Center at speeds in excess of 80 to 90 miles per hour. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

8. Mr. Byrd made a right-hand turn at the intersection of Highway 80 and Highway 33, and proceeding down Highway 33 towards Hillsboro in the wrong lane of travel. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

9. An elderly couple that was traveling on Highway 33 towards the Highway 80 intersection was forced to swerve into the left lane to avoid a head-on collision with Mr. Byrd. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

10. Deputy Zirk swerved to avoid the elderly couple's vehicle, but was unable to completely avoid it and sideswiped their vehicle. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

11. Deputy Zirk abandoned the chase to see to the vehicle that he struck. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

12. Officer Kruger continued the pursuit down Highway 33 towards Hillsboro. (*Id.* at 3.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

13. That evening, there was a tractor pull taking place at the Hillsboro Firemen's Memorial Park. (*Id.*, at 2; Aff. Prochnow, Ex. 3 (map).)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

14. Defendant Officer Brandon Arenz was assisting Vernon County with crowd control at the tractor pull when the dispatcher advised him of Mr. Byrd's progress. (Aff. Prochnow, Ex. 1, at 2.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

15. Officer Arenz retrieved a squad car and proceeded to the south side of Highway 33, across from the entrance to Hillsboro Equipment, Inc.—less than three miles from Hillsboro proper. (*Id.* at 2–3; Aff. Prochnow, Ex. 3.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

16. Officer Arenz exited his squad car to set spike strips on the road, when he observed Mr. Byrd's vehicle approaching on the westbound lane of travel. (Aff. Prochnow, Ex. 1, at 3.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

17. A civilian vehicle pulled out into Highway 33 from the turn off to Hillsboro Equipment and Mr. Byrd stopped his vehicle. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

18. Mr. Byrd put his vehicle into reverse and backed into the squad car driven by Officer Kruger, who was still in pursuit, and inflicted severe damage to the squad car. (*Id.*; see also Aff. Kruger, Ex. 1.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

19. The collision injured Officer Kruger, who was later transported by ambulance to a nearby hospital. (Aff. Prochnow, Ex. 1, at 3.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

20. Mr. Byrd then steered his vehicle around the civilian vehicle, into the oncoming traffic lane, whereupon Officer Arenz stepped into the middle of the lane, drew his service weapon, and ordered Mr. Byrd to stop. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

21. Mr. Byrd accelerated his vehicle at Officer Arenz, who fired several shots at the Mr. Byrd's oncoming vehicle. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

22. Officer Arenz dodged Mr. Byrd's vehicle, and fired several shots as Mr. Byrd fled, attempting to stop the immediate threat. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

23. As he approached the intersection of Highway 33 and County Road WW, Mr. Byrd stopped his vehicle and continued to flee on foot over an embankment. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

24. Officer Arenz pursued on foot, and when he crested the embankment, drew his service revolver and directed Mr. Byrd to stop. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

25. Mr. Byrd complied with the instruction, raising his hands and getting on his knees. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

26. Officer Arenz handcuffed Mr. Byrd and then escorted him back up the hill and turned him over to a Juneau County deputy. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

27. Mr. Byrd was then transported by ambulance to St. Joseph's Hospital in Hillsboro. (Aff. Prochnow, Ex. 7, at 1 (St. Joseph records).)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

28. An x-ray disclosed a radial head fracture on Mr. Byrd's right elbow. (*Id.* at 4.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

29. This type of injury commonly occurs as a result of a fall with an outstretched arm. (Aff. Prochnow, Ex. 8, at 4 (St. Joseph discharge summary); accord Nick Pappas, M.D. & Joseph Bernstein, M.D., *Fractures in Brief: Radial Head Fractures*, 468 CLINICAL ORTHOPAEDICS & RELATED RESEARCH 914, 914 (2010) (Aff. Prochnow, Ex. 9).)



**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

30. On April 5, 2017, Mr. Byrd pled guilty to two felony charges of attempting to flee or elude a traffic officer and one felony charge of reckless driving causing injury stemming from this chase. (Aff. Prochnow, Ex. 2, at 6–7 (plea hr'g tr.).)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

31. At the plea hearing, Mr. Byrd admitted to the accuracy of the facts as recited in the criminal complaint. (*Id.* at 14.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

32. Mr. Byrd was assisted by counsel at the hearing and had sufficient time to fully discuss the ramifications of his plea with his attorney. (*Id.*, at 13.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

33. The Circuit Court of Vernon County, Wisconsin held that Mr. Byrd provided a sufficient factual basis for the plea, and that Mr. Byrd had made his plea knowingly, intelligently, and voluntarily. (*Id.*, at 15.)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

34. Accordingly, the Circuit Court convicted him of the three charges. (*Id.*)

**Response:** None.

**Reply:** Undisputed. Plaintiff did not file a Response to Defendant's Proposed Findings of Fact, and this fact is admitted per the District Court's Order, Doc. 18, at 15.

Dated: December 13, 2017

Lind, Jensen, Sullivan & Peterson  
A Professional Association

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